

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **SENATOR VICKI COCCHIARELLA**, on March 24, 2003
at 9:06 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Sherm Anderson (R)
Sen. Vicki Cocchiarella (D)
Sen. Kelly Gebhardt (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)
Sen. Carolyn Squires (D)

Members Excused: Sen. Bob Keenan (R)
Sen. Dale Mahlum, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Fred Thomas (R)

Members Absent: None.

Staff Present: Sherrie Handel, Committee Secretary
Eddy McClure, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 507, 2/24/2003; HB 385,
2/24/2003; HB 640, 3/7/2003; HB
410, 2/22/2003
Executive Action: HB 507

{Tape: 1; Side: A}

HEARING ON HB 507

Sponsor: REPRESENTATIVE JOHN BRUEGGEMAN, HD 74, POLSON

Proponents: Jerry Keck, Employment Relations Division,
Department of Labor and Industry

Opponents: None

Opening Statement by Sponsor:

REPRESENTATIVE JOHN BRUEGGEMAN, HD 74, POLSON, stated this is a very simple bill that will change one word from "may" to "shall."

Proponents' Testimony:

Jerry Keck, Employment Relations Division, Department of Labor and Industry, indicated that a legislative audit determined that state rules regarding child labor laws had not been adopted. They are following the legislative audit by making this change.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SEN. KELLY GEBHARDT discussed with Mr. Keck the statement that there hadn't been any problems. He wanted to know why this change came about. Mr. Keck answered that it was due to the recommendations from the legislative audit. SEN. GEBHARDT stated he just wanted to make sure there weren't any children or parents complaining.

Closing by Sponsor:

REP. BRUEGGEMAN closed by saying this is a simple, clarifying bill. The actual issue is that there is a simple rules discrepancy.

SEN. VICKI COCCHIARELLA indicated that SEN. SHERM ANDERSON was willing to carry HB 507 should it pass through this committee.

HEARING ON HB 385

Sponsor: REPRESENTATIVE NANCY FRITZ, HD 69, MISSOULA

Proponents: Cort Jensen, Montana State Department of Consumer Protection; Dale Smiley, Montana Motorcycle Safety Advisory Committee and Montana Motorcycle Association; Steve Turkiewicz, Montana Auto Dealers;

Opponents: None

Opening Statement by Sponsor:

REPRESENTATIVE NANCY FRITZ, HD 69, MISSOULA, said this bill changes the lemon law in two ways. It would cover not only new vehicles purchased in this state, but also new vehicles purchased in another state and registered for the first time in Montana. Montana's Lemon Law says that after four repairs of the same malfunction on a new car that seriously affects its value or safety, the owner is allowed an arbitration hearing to decide if the vehicle manufacturer should buy back the vehicle. Three people arbitrate--one representing the automobile manufacturer, one representing the purchaser, and the third representing the Office of Consumer Affairs. The hearing would be mainly to determine that the law applies, that the vehicle has less than 18K miles, was owned for less than two years, and that it had not been abused or involved in an accident that caused the malfunction. **REP. FRITZ** shared that a constituent asked her to carry the bill. She purchased a car in Washington, a car not available in Montana. The car turned out to be a lemon. She called the Montana Attorney General's Office and was told the car was not covered under Montana law, because it was not purchased here. She then called the Office of the Attorney General in Washington and was told her car was not covered under their lemon law because it was not registered there. This bill would rescue such Montanans from lemon law purgatory. **REP. FRITZ** presented two amendments on behalf of the Department of Consumer Affairs, **EXHIBIT (bus62a01)**, and **EXHIBIT (bus62a02)**. The first amendment adds motorcycles to the list of covered vehicles. The second amendment lowers the number of state arbitrators on a hearing from three to one. She asked for this amendment for two reasons. First, the state has had a hard time finding willing arbitrators. Second, this would save the state over \$1K.

Proponents' Testimony:

Cort Jensen, Montana Department of Consumer Protection, supported the bill and amendments wholeheartedly. Luckily, manufacturers

of cars and motorcycles have filled in the gaps on these issues; however, there are lawyers who would prefer that gaps not exist. The three arbitrator rule, while initially seeming like a good idea, when he talked to the car manufacturers and consumers, they found it hard to find people willing to do it. It saves the state a little bit of money and a lot of time.

Dale Smiley, Montana Motorcycle Safety Advisory Committee and Montana Motorcycle Association, was present to support the bill, but particularly those parts that dealt with motorcycles. He said that if you have a \$27K Yugo in this state, the lemon law applies to you; however, if you have a \$30K Harley-Davidson motorcycle, it does not. The motorcycle manufacturers are not opposed to the bill as they do not want bad vehicles out in the public either. It helps Montana dealers when bad vehicles are off of the road.

Steve Turkiewicz, Montana Auto Dealers, rose in support of HB 385. He explained that this bill recognizes that all Montanans should be protected by the lemon law, whether they bought the vehicle in state or out of state. He emphasized that the arbitration change recognizes the rural nature of Montana. He urged the committee's do concurrence.

Opponents' Testimony:

None

Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA wanted to know how Montana's Lemon Law is enforced in another state. **Mr. Jensen** replied that, as long as the new vehicle's first registration was in Montana, even though it was purchased in another state, it would be covered by Montana's Lemon Law.

SEN. KELLY GEBHARDT questioned **Mr. Jensen** about purchasing a vehicle in Helena and then moving to Washington. He asked if that person could come back to Montana to utilize the Lemon Law, to which **Mr. Jensen** replied in the affirmative.

Closing by Sponsor:

REP. FRITZ stated that **SEN. DAN HARRINGTON** had sponsored the original Lemon Law and had agreed to carry this bill, should it be passed out of this committee.

HEARING ON HB 410

Sponsor: REPRESENTATIVE CINDY YOUNKIN, HD 28, BOZEMAN

Proponents: Cary Hegreberg, Montana Contractors Association;
Jerry Driscoll, AFL/CIO; George Wood, Montana
Self-Insurers Association; Jacqueline Lenmark,
American Insurance Association

Opponents: None

Informational Witnesses:
Nancy Butler, Montana State Fund; Kevin Braun,
Montana State Department of Labor and Industry

Opening Statement by Sponsor:

REPRESENTATIVE CINDY YOUNKIN, HD 28, BOZEMAN, explained that HB 410 arose out of a situation involving an employer who was giving an incentive payment to employees who were traveling to work sites that were distant from Bozeman. He gave about \$10 or \$20 per day for travel, although it was not the federal rate for mileage. There was a car accident in which someone died. As a result of that, it went through the Workers Compensation Court, which found that, while he was not within the scope of his employment, was covered by workers comp. The employer paid 60 percent of the employee's salary for the next ten years. The intention is not to pay employees while they are not within the scope of their employment. This bill went through several revisions in House committee. There were still concerns at that point with the way the bill was drafted. If you're just giving a small stipend for travel expenses and you punch out and stop for dinner on the way home, drive the other 30 miles home, and get into an accident, that is not within the scope of your course of employment. She shared that an amendment was being prepared at the time of this hearing. What it would do would take out "actual employment" on line 26 of page 1 and would go on to define at the top of page 2 that "reimbursement does not include payments or compensation made as an incentive to the employee who travels to and from a job site." Under the applicability section on line 18, where it says, "compensation filed," it would delete those words and add, "injuries that occur on or after ..." in order to not make it retroactive.

Proponents' Testimony:

Cary Hegreberg, Montana Contractors Association, rose in support of this bill and said it was the result of an accident injury incurred by an employee of one of their member companies. He

went on to say this matter caused a great deal of concern to this particular company owner and to all of their members, who, on occasion, pay a stipend or partial travel reimbursement for employees to go to somewhat remote work sites. He thought most of small Montana businesses may, on occasion, fill an employee's car gas tank or hand them a small amount of money to cover some of their travel costs. This bill would allow employers to continue to help employees in that way without getting caught in this precarious situation.

Jerry Driscoll, AFL/CIO, talked about travel on page 2. He said it is not really travel pay in construction. It is just a payment to get the employee there. If you use your camper trailer to live in the remote area, you still get the money. He used Colstrip as an example. There is no relationship on where the employee lives and the job site is located. His stated fear was that if the law is not amended with this bill, contractors will discontinue paying that tax-free money.

{Tape: 1; Side: B}

George Wood, Montana Self-Insurers Association, rose in support of the bill, but said it needs clarification. He discussed a person was traveling from Salt Lake City to Montana to apply for a specific job, was injured in a car accident in Dillon. The court determined he was in the course of his employment, because they anticipated if he got the job, he would be paid some travel benefits. Clarification is needed to indicate when the person is in the course of employment. His organization felt this bill as amended would do so.

Jacqueline Lenmark, American Insurance Association, rose in support of the bill and amendments as described by the sponsor.

Opponents' Testimony:

None

Informational Witness Testimony:

Nancy Butler, Montana State Fund, stated her main concern with the bill was that the language be clear enough that it can be administered without litigation. She said she would appreciate the committee's assistance with an amendment.

Kevin Braun, Department of Labor and Industry, discussed regulatory obligations under the Workers Compensation Act that his department has and offered his informational assistance.

Questions from Committee Members and Responses:

SEN. CAROLYN SQUIRES asked **Mr. Driscoll** about **REP. YOUNKIN'S** comments on working with labor and travel time. **Mr. Driscoll** replied in the negative.

SEN. DON RYAN addressed his scenario to **Mr. Driscoll**. **SEN. RYAN** said, hypothetically, you have a young person working for a contractor and the employer sends him and another man to a distant job using their own pickup carrying the employer's tools. The employer will pay these two young men \$15 to drive back and forth every day. The young men would be paid for eight hours on the job even though they drive back and forth several hours each way. **SEN. RYAN** asked **Mr. Driscoll** if it was okay not to charge workers comp if they get paid for driving back and forth. **Mr. Driscoll** explained it was illegal not to pay them by the hour in the example cited by **SEN. RYAN**. Telling an employee to put tools in their truck and take them to the job site would put the employee on the clock as soon as the employer orders it. **SEN. RYAN** wanted to know if **Mr. Driscoll** believed that, by passing this bill, there would be protection from workers comp claims; but, employers would push the ticket and it would open the door to putting more pressure on the employee to do it the way he described and could it lead to larger contractors outbidding smaller contractors near that job site by reducing the amount they pay people to go back and forth to work, thus allowing them to underbid the job. **Mr. Driscoll** agreed it could happen; however, it was not the intent of the law. He did feel, however, that employees could file a wage claim.

SEN. VICKI COCCHIARELLA inquired of **Ms. Butler** a situation wherein an employee is driving from home to Burger King to go to work or from Missoula to another town to teach. Would that employee be covered under workers comp? **Ms. Butler** answered that most states' workers comp laws do not cover an employee while traveling to and from work. She listed instances when an employee would be covered by workers comp, such as being paid partial or full mileage.

SEN. CAROLYN SQUIRES asked **Ms. Butler** about having to travel within your work hours or work day. She replied it would not always apply.

Closing by Sponsor:

REP. YOUNKIN stated this bill was intended to give employers an incentive to keep offering an incentive to employees. It helps for both the employer and employee. The payment for incentive

needs to be in a collective bargaining agreement or employee handbook.

HEARING ON HB 640

Sponsor: REPRESENTATIVE DICK HAINES, HD 63, MISSOULA

Proponents: REP. DAVE WANZENRIED, HD 68, MISSOULA; Bruce Simon, citizen from Billings; Bobbi Rosignoll of Lolo; Ann Mary Dussault, Missoula County Commissioner; Roger Halver, Montana Association of Realtors; Steve White of Bozeman; Ken Miller, former State Senator and citizen; Gilda Clancy, Eagle Forum; Harold Blattie, Montana Association of Counties

Opponents: Chuck Tooley, Mayor of Billings; Paul Gruber, Montana State Fire Chiefs' Association; Alec Hansen, Montana League of Cities; Mike Cadas, Mayor of Missoula; Byron Roberts, Montana Building Industry Association; Charles Brooks, Billings Area Chamber of Commerce; Pat Clinch, Montana State Firefighters, Neal Poulsen, City of Bozeman; Clark Johnson, City of Bozeman

Informational Witnesses:

Greg Petesch, Legislative Branch

Kevin Braun, Department of Labor and Industry

Opening Statement by Sponsor:

REPRESENTATIVE DICK HAINES, HD 63, MISSOULA, shared the long story of this "donut" bill. Montana law allows a city to have jurisdiction 4.5 miles outside of the city limits. He explained that Montana law gives cities building code authority up to 4.5 miles outside the boundaries of the municipality. Building code authority is the authority to enforce code to which the standard by which construction of the building must appear. The idea is that inspectors for the government entity that has the building code authority will inspect building construction that is underway and approve or disapprove of the construction work.

REP. HAINES then explained why we need a donut bill. It is because citizens within the donut area believe they are being regulated unfairly in a sloppy and haphazard manner and the regulations cost them money for which they receive little or no value. They have no place to protest nor seek relief from their difficulties. In fact, in some instances, the unfairness of the

situation is appalling, even to the point of some city actions appearing to be vindictive. He called it the case of the king versus the peasantry and stated if a regulatory fee can be considered a form of taxation, then it is a classic case of taxation without representation. It was the sole reason he carried the bill. To this point, citizens living outside the corporate boundaries of donut cities have fought since 1995 to end city building code authority beyond corporate limits. In 1999, a bill was passed ending city authority. It was vetoed and a veto override was short by three votes. In 2001, SB 242 was passed and was signed into law. The cities ignored the new statute and requested the Montana Supreme Court to accept the case to overturn SB 242. In the name of emergency, the court issued an injunction and took original jurisdiction of the case in December, 2001. For better than 14 months, the court did not make a decision. Cities were still regulating citizens in Montana in a manner that had no appeal process. Those citizens in those areas have no say, no vote, no appeal. The view of the Supreme Court by the donut cities claimed that allowing only property owners in potential donut areas could vote on whether or not there should be a donut area disenfranchised citizens who did not own property. On March 18, 2003, the Supreme Court made a decision and threw out all of SB 242. **REP. HAINES** told the committee they get "first crack" at the new donut bill. The bright light is that the Code Commissioner has written amendments that would make it a good law and would permit cities, counties and affected citizens to do things in a manner clear to all concerned.

{Tape: 2; Side: A}

He reminded the committee that the issue is taxation without representation and not public safety. In closing, **REP. HAINES** said all protestations of opponents could be taken care of by the procedures by the new procedures in HB 640.

Proponents' Testimony:

REP. DAVE WANZENRIED, HD 68, MISSOULA, asked the committee to take swift action on this bill and said the amendments to the bill are approximately 14 pages long. The amendments will take this bill and put it in a form that everyone can understand. He said we owe it to the people in all donut cities what the policy of this state is going to be regarding government building codes.

Informational Witness Testimony:

At the request of **CHAIRMAN DALE MAHLUM, Greg Petesch** explained the extensive amendments, **EXHIBIT (bus62a03)** (HB064001.agp) to the bill.

Proponents' Testimony:

Bruce Simon, citizen from Billings, testified as a proponent of the bill with the amendments. He stated it is a long-standing problem and constitutional issue that needs to be resolved. Allowing a city government to govern county residents is a violation of those county residents' constitutional rights. He went on to express his concerns with the amendments and the fact that some people who testify at hearings are not registered as lobbyists. **Mr. Simon** also explained several cases where county residents have had difficulties with building inspectors who enforced their building codes after the fact. He requested that the transition portion of the amendments reflect an effective date of May 1, 2003.

Bobbi Rosignoll of Lolo, rose in support of the bill in an effort to restore representation and equal protection to county residents and gave a history of her experience with this issue. She presented her written testimony, **EXHIBIT (bus62a04)**.

Ann Mary Dussault, Missoula County's Chief Administrative Officer, was present at the direction of the Missoula Board of Commissioners. The Board of Commissioners reviewed the amendments proposed by **REP. HAINES**, concurred with them, and asked **Ms. Dussault** to speak in favor of the bill today. They had two separate issues with this bill.

{Tape: 2; Side: B}

Roger Halver, Montana Association of Realtors, expressed his intent to leave the committee with the knowledge that his organization is, in no way, against coding. They are against coding without representation. He used the analogy of the Boston Tea Party as a comparison to this donut area issue. He encouraged the committee to pass the bill.

Steve White of Bozeman, stated his involvement in this issue since 1995. In 1995, SB 227 was introduced by **SEN. WELDON** to do away with the donut. Within five days of **Mr. White's** testimony in favor of that bill, he had a visit from the city of Bozeman building inspector, who drove outside the city limits and realized that **Mr. White** had a 1,200 square foot pole barn that had been built two years prior. This building inspector then left on his gate post a cease and desist order and told **Mr. White**

to go in and get a building permit from the city of Bozeman. He then contacted the state Department of Commerce and told them that **Mr. White** had an electrical tag put on his meter a year and a half prior, which should have been done by the city of Bozeman and not the state. The inspector demanded that the state revoke **Mr. White's** permit, which they did. The city of Bozeman then contacted Montana Power and said **Mr. White** did not have a permit for electricity and they should unplug **Mr. White's** electricity, which Montana Power did with only four hours notice. He was without power for ten days simply because the city of Bozeman had to go out and do an electrical inspection. The irony, he said, was that the electrical inspector for the state was a master electrician, and the one from the city of Bozeman was still doing paperwork to become an official inspector. Nevertheless, **Mr. White** had to give the city of Bozeman permit money. From that point on, he has built an outbuilding and house and has given the city of Bozeman \$2K in building permit. He expressed how hard it was to watch SB 227 go down in defeat that session. In 1997, **Mr. White** again traveled to Helena to testify in favor of **REP. SIMON'S** HB 388. In 1997, Bozeman, as well as other donut cities, have two donuts--a planning and zoning donut and a donut for building permits. All of a sudden, they lost their planning donut. Many people thought you didn't have to go to the city for your building permit, but that was not the case. HB 388 was amended down to the point where the original intent of it was taken away and the donut continued on. Once again, in 1999, he traveled to Helena for HB 91, which was brought forward by **REP. SIMON**. With a lot of hard work, that bill made it through. The governor vetoed the bill one day after the legislature ended, but called a special session of the legislature, when **Mr. White's** group fell three votes short of overriding the veto. In 2001, there were two bills--HB 457 by **REP. HAINES** and SB 242 by **SEN. O'NEILL**. He stated how important this bill was to him. The bottom line is that he and his family want to be done with the city. His family has owned their land before Bozeman was an incorporated town or city. While there is a lot of growth going on, there is a need for citizens to be free of the rule of jurisdiction in which they have no battle. He asked that the committee pass the amendments and explained how he felt the county could set up little pockets or areas where they could allow city folks to administer their building codes.

Ken Miller, former State Senator and citizen, shared his experience with the past bills enacted surround this donut issue. He emphasized that the cities should only have jurisdiction within the city limits and county government should set the same rules for all of those who live within their jurisdiction.

Gilda Clancy, Eagle Forum, stood before the committee in favor of this legislation and stated she thought it very clear that the intent of passing SB 242 was to eliminate the city's jurisdiction of the donut area.

Harold Blattie, Montana Association of Counties, came before the committee as a cautious proponent. His greatest concern was the countywide area enforcement of a building code and the requirement that, if the county chooses to adopt a building code countywide, the fire, sewer and water districts in unincorporated communities might like the increased building code enforcement.

Opponents' Testimony:

Chuck Tooley, Mayor of Billings, joined the Chamber of Commerce and Building Industry Association in opposing HB 640 as it stood. One principal that was discussed for years and led to the introduction of bills by previous legislators was the principal of taxation without representation. He stated the principal makes sense. Citizens who must comply with certain regulations or must pay certain taxes or fees should have the opportunity to vote for or against those officials who impose those regulations or costs. He submitted that principal could be addressed in such a way as to remove any valid protest about taxation without representation. If a county commission elected by the people of that county decides to inspect buildings under construction in their county to insure that they comply with the building code of the state of Montana, the residents of that county can register their opinions of that decision at the ballot box. There would be no issue of taxation without representation any longer. This bill removes that authority. He read from the draft of the bill, and said, "This is an act revising local government building code authority eliminating the ability of any county to designate a portion of a county outside a municipality as the county jurisdictional area." **Mr. Tooley** stated the state of Montana requires compliance with certain building codes, but does not have the resources to enforce those building codes in every corner of this state; therefore, if county commissioners decide they want to protect the health and safety of their residents by providing building inspections for the benefit of their residents, he agreed with what **Mr. Blattie** had said in his testimony. He asked the committee to leave it up to the counties to decide to see to the needs of their own residents instead of deciding for them what is best for them.

Paul Gruber, Montana State Fire Chiefs Association, stood in opposition to HB 640 as it was written. He believed that HB 640 would be detrimental to the enforcement of building codes in single family residences, duplexes, triplexes, and fourplexes

built outside of Montana's municipalities. He believes the counties need to have the flexibility to adopt building codes for portions of counties, not just the entire county. He stated his belief that county commissioners should be given flexibility to develop a process for adopting building codes for residential occupancies under fiveplexes. County commissioners need to be given the authority to enact a code enforcement program and to choose how that enforcement will be carried out. It was his experience that it is human nature for people to not want to be subjected to a code enforcement program; however, this willingness to be subjected to the mandates of a code is the price one pays to ensure that life safety requirements are met where we live, work, and play. It was his experience that when a disaster does occur as a result of building or fire codes, the citizens demand accountability of their elected officials wondering how they could have allowed an unsafe building to be built or occupied. This is the scene continually played out across the country when disaster strikes. The building code ensures that new single-family residences, duplexes, triplexes, and fourplexes have escape windows in sleeping areas, fire-rated sheet rock and solid-core doors between homes and attached garages and fire-rated sheet rock between separate dwelling units. If there were no code regulating the construction of residential occupancies, the safety of the public and responding firefighters would be jeopardized. Fire dollar loss would also inevitably rise due to the lack of code enforcement. He stated it is a statistical fact that rural areas experience a larger per capita loss because of fire than do urban areas. The residential structures in areas where fire department response time is relatively long need to be protected by more enforcement rather than less. **Mr. Gruber** quoted statistics surrounding fires and losses in residential homes in rural areas.

{Tape: 3; Side: A}

Alec Hansen, Montana League of Cities, stated this long-running disagreement was the result of what happens when the state tries to fix up or put a patch on a bad law. More than 20 years ago, a member of the legislature had a disagreement with a state building code requirement and persuaded the legislature to adopt a law that exempted anything with less than five dwelling units from the state building code. Subsequently, it was decided that the cities had effective code enforcement programs and that there had to be a way to buy inspection services (structural and life safety) in the fastest growing areas of the state. That's why, he said, they were here. He understood why individuals would object to paying for a city service when they do not live in the city and felt it had to be fixed. He suggested that counties be allowed to enforce building codes. He thought the legislature should trust the counties.

Mike Cadas, Mayor of Missoula, also was tired of being present for this issue and hoped the committee could get it resolved soon. His fundamental concern with the bill was that it doesn't allow counties to determine what the jurisdiction ought to be where the code would be applied. The reason for it is quite practical. There are a lot of parts of counties where there is very little happening and the economics of doing inspections in those areas would not pay. He gave Missoula as his example. They had 6,400 permits of all sorts in the city and donut area in FY02. In just the donut area, they had 490 permits, so about 25 percent of the permits were in that donut area. He would be happy to turn the donut areas over to the counties. **Mr. Cadas** also had concerns with the amendments. He thought you need to allow jurisdiction where the permit starts to complete the permit if this bill passes.

Byron Roberts, Montana Building Industry Association, sought the committee's help in defeating HB 640 the way it is currently written. This system of extraterritorial administration of building codes has been used in this country effectively for years. The bill would effectively eliminate code enforcement in the fastest growing areas in the state by requiring county-wide jurisdictions. He questions why. They allow counties to form districts for a multitude of purposes including sewer, water, fire, mosquito control and zoning. He felt building code enforcement districts could be formed the same way. He did not think counties would enforce building codes county wide due to the cost factor. If it did, it would become highly unlikely that cities and counties would jointly administer a program that would be county wide. The elimination of building inspections would have a noted impact on the cost of homeowners insurance. He also referred to the near impossibility of builders buying liability insurance and a lack of building code enforcement would affect this issue. Also, they continually encourage cities and counties to cut costs and bring about added efficiencies by working jointly, entering into local agreements, and sharing resources to administer programs. He felt that by allowing a county to designate a portion of the county would provide a very effective system of building code enforcement. Building codes are essential, but this bill is about eliminating building codes, so the Montana Building Industries Association urged the committee to vote no on HB 640 as currently written.

Charles Brooks, Billings Area Chamber of Commerce, told the committee his organization sees this as a major issue of local control. They also see the legislature stepping in and telling the county commissioners how they should run their business as elected officials. They feel this bill should be amended, giving the county the opportunity to set up sections within the county

for zones and it should be amended allowing those registered voters within that jurisdiction the opportunity to vote. He thought it was a sad day when the state steps in and tells local government how to run their business. They opposed the bill.

Pat Clinch, Montana State Council of Professional Firefighters, raised concerns about if fire codes would be next. Currently, many jurisdictions have extraterritorial areas in which his organization provides fire protection and code enforcement. They need to have more flexibility for local governments to decide what is best in that local community. Many times, a small, local community may be part of the county, but not the entire county.

Neil Poulsen, Building Official for the City of Bozeman, provided written testimony, **EXHIBIT (bus62a05)**.

Clark Johnson, Bozeman City Manager, gave the committee an example and emphasized that they are very anxious to be rid of this duty. They look forward to the county taking on their own responsibility of enforcing building codes and getting the city out of it. However, he hoped the committee would allow the counties to do it by area. **Mr. Johnson** pointed out that **Mr. White** does not live in Bozeman. In fact, he lives in the Valley Grove/Wiley Creek area. It's that same kind of grouping people together that has building codes that are legitimate in cities necessary for those populated areas.

Informational Witness Testimony:

Kevin Braun, Department of Labor and Industry, explained the transitional section. He said the reason that sentence is in there is because the state doesn't require permits for all of the permits currently being issued by those cities or municipalities.

{Tape: 3; Side: B}

Questions from Committee Members and Responses:

SEN. VICKI COCCHIARELLA asked **REP. HAINES** if the way she understood his bill to read, that he would require the counties to impose building codes on the whole county, was a fight in which he was willing to participate. He answered that he stood before the committee with only one issue and that was to give people who live outside the city the right to build their home without the building code enforcement of the cities. **SEN. COCCHIARELLA** reiterated that her interpretation of his bill will kill all building code enforcement in counties and felt it is important to address the issue.

SEN. COCCHIARELLA then expressed her concern to **Ana Mary Dussault** that, if this bill passes and counties have jurisdiction and language in the bill is left out, what that would mean. **Ms. Dussault** replied counties are not experts in building codes, because they have not done them before. The county commissioners of Missoula County would have two choices to make if this bill passes. One would be to adopt building codes and enforce those codes throughout the entire county. The second option would be to do nothing and leave it to the state to enforce those regulations that are applicable outside of the city limits. Her understanding was that the state does not inspect residential occupancies under fiveplexes.

Kevin Braun was then asked by **SEN. COCCHIARELLA** what the state is allowed to inspect.

CHAIRMAN DALE MAHLUM requested that **Ms. Dussault** revisit a previous issue which they discussed. He wanted to know if she would want the whole county under her jurisdiction or just certain, fast-growing areas. **Ms. Dussault** answered that commissioners would prefer to do certain areas of the county and not all of the county. She said there are legitimate public policy debates and arguments on both side of the issue. She thought it would be best for counties to have that debate at home, but Missoula County Commissioners have agreed to the county wide language and they understand the political ramifications of making that decision.

SEN. DON RYAN discussed Black Eagle, which is not in the city limits of Great Falls. He asked **Mr. Hansen** if the City of Great Falls could require the residents of Black Eagle to obtain building permits. **Mr. Hansen** answered only if the city of Great Falls were to adopt extraterritorial building codes.

Closing by Sponsor:

REP. HAINES closed by addressing some of the questions and comments he heard during the hearing.

{Tape: 4; Side: A}

EXECUTIVE ACTION ON HB 507

Motion/Vote: **SEN. COCCHIARELLA** moved that HB 507 BE CONCURRED IN. Motion carried 8-0. **SEN. SHERM ANDERSON** WILL CARRY THE BILL.

ADJOURNMENT

Adjournment: 11:47 A.M.

SEN. DALE MAHLUM, Chairman

SHERRIE HANDEL, Secretary

DM/SH

EXHIBIT (bus62aad)